

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
LES ROWLAND CONSTRUCTION, INC.)
)
Appellant,)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 702
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100 civil penalty for an alleged airborne particulate violation of respondent's Regulation I, came as a formal hearing before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith) in the Tacoma facility of the State Board of Industrial Insurance Appeals on December 18, 1974.

Appellant was represented by its vice president, Robert P. Cowden. Respondent appeared through Keith D. McGoffin. Dave Ummel, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

From transcript read and exhibits examined, the Pollution Control

2-17-75

1 Hearings Board makes these

2 FINDINGS OF FACT

3 I.

4 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd
5 Ex. Sess., has filed with this Board a certified copy of Regulation I,
6 containing respondent's regulations and amendments thereto.

7 II.

8 Section 9.15(c) of Regulation I makes it unlawful to cause or
9 permit open areas within a private lot to be maintained without taking
10 reasonable precautions to prevent particulate matter from becoming
11 airborne. Section 3.29 of Regulation I authorizes a civil penalty of
12 not more than \$250 for any violation of Regulation I.

13 III.

14 In the summer of 1974, appellant was engaged in a mobile home court
15 project on a ten-acre site in the 2900 block of South 92nd Street,
16 Tacoma, Pierce County. Appellant employed one Harry London, a
17 subcontractor, as a bulldozer operator to clear and grade the site.
18 No rain had fallen on the site for most of July and August, 1974,
19 and the bulldozed site was covered with dust from four to six
20 inches deep. No water had been applied to control the dust.

21 IV.

22 The undenied and uncontradicted testimony of respondent's
23 inspector was that appellant "had told him (Harry London) not
24 to use water on the site unless an air pollution man came by and
25 told him that he should or request that he do so." (TR 8-line 7).
26 Thus, appellant assumed supervision and control of the work of

27 FINDINGS OF FACT,
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1 the subcontractor, thereby making appellant responsible for his
2 acts and omissions.

3 Further the subcontractor, London, was aware of the respondent's
4 regulations (TR 13-line 14), as they pertained to dust.

5 V.

6 On August 29, 1974, in response to citizen complaints, an
7 inspector on respondent's staff witnessed for ten minutes the
8 bulldozer raising large clouds of airborne dust at the site. The
9 inspector issued to the bulldozer operator Notice of Violation
10 No. 9650, citing Section 9.15 on Regulation I. Subsequently, and in
11 connection therewith, respondent served appellant with Notice of
12 Civil Penalty No. 1721 in the sum of \$100.00, which is the
13 subject of this appeal.

14 VI.

15 Upon receipt of the notice of violation, appellant ceased the
16 bulldozer grading operation and did not renew same until after rain
17 had fallen on the site.

18 VII.

19 Any Conclusion of Law hereinafter stated which is deemed to
20 be a Finding of Fact is adopted herewith as same.

21 From these Findings, the Pollution Control Hearings Board comes
22 to these

23 CONCLUSIONS OF LAW

24 I.

25 Appellant was in violation of Section 9.15(c) of Regulation I
26 as cited in Notice of Violation No. 9650.

27 FINDINGS OF FACT,
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AND ORDER

1 II.

2 While we accept the word of Mr. Cowden, appellant's general
3 manager, that he was not personally aware of respondent's dust
4 regulations, our Finding of Fact IV reveals an instruction to
5 violate such regulations. Some unidentified person in the employ
6 of appellant gave those instructions, but appellant is charged
7 with notice of such. Appellant is responsible for the actions of its
8 employees.

9 The \$100.00 civil penalty is reasonable and should be affirmed.

10 III.

11 Any Finding of Fact herein stated which is deemed to be a
12 Conclusion of Law is adopted herewith as same.

13 Therefore, the Pollution Control Hearings Board issues this

14 ORDER

15 The imposition of the \$100.00 civil penalty is affirmed.

16 DONE at Lacey, Washington this _____ day of _____, 1975.

17 POLLUTION CONTROL HEARINGS BOARD

18
19 _____
20 CHRIS SMITH, Chairman

21
22 _____
23 WALT WOODWARD, Member

24
25 _____
26 W. A. GISSBERG, Member

26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER